



DELTA STEWARDSHIP COUNCIL

A California State Agency

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January 8, 2018

Chair
Randy Fiorini

David Forkel, Chairman
Reclamation District No. 2028
343 East Main Street, Suite 815
Stockton, CA, 95202

Members
Frank C. Damrell, Jr.
Patrick Johnston
Susan Tatayon
Skip Thomson
Ken Weinberg
Michael Gatto

Executive Officer
Jessica R. Pearson

Subject: Certificate of Consistency, Bacon Island Levee Rehabilitation Project

Dear Mr. Forkel:

Thank you for Reclamation District 2028's (RD 2028) certification of consistency filed with the Delta Stewardship Council (Council) on November 17, 2017. Identifying covered actions and working towards consistency with the Delta Plan are important activities in helping the Council achieve the coequal goals of water supply reliability and ecosystem health.

Early consultation, and consistency certifications allow the Council to track projects in the Delta, develop a better understanding of Delta challenges, and identify the required resources and funding to manage those challenges. Consistency certifications can educate other project proponents and assist with the development of a unified understanding of the Delta system as a whole. Achieving the coequal goals will require coordination, integration, and the partnership of all interested Delta parties. RD 2028's participation in this process is important and the Council appreciates your contribution to this effort.

Regarding RD 2028's letters to the Council, respectively dated November 17 and December 15, 2017, in each letter, RD 2028 asserts that the Project is exempt from Delta Reform Act requirements as "routine maintenance and operation" of a facility under Water Code section 85057.5(b)(5).

The Council disagrees with your interpretation of section 85057.5(b)(5) in this case. The Project includes long-term levee rehabilitation activities necessary to improve flood protection and enhance the environment along the subject levee. These activities include raising and widening the existing levee, constructing a toe berm, and planting native grasses for habitat enhancement. According to the December 15 letter, RD 2028 internally classifies such long-term rehabilitation activities as routine maintenance and operation.

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

– CA Water Code §85054

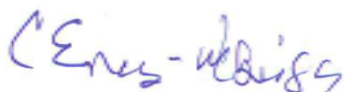
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Although the Delta Reform Act and the Delta Plan do not currently define “routine maintenance and operation” activities for purposes of section 85057.5(b)(5), the Project’s long-term rehabilitation activities fall outside of any potentially applicable definition. For example, the Central Valley Flood Protection Board’s regulations define “maintenance activities” to include “any work required to retain or maintain the intended functions of flood control facilities and of existing encroachments.” (23 Cal. Code Regs., tit. 23, § 4, subd. (v).) The Project’s long-term rehabilitation activities go beyond this definition.

Please note that the Council is also currently considering amendments to the Delta Plan that would define “levee maintenance” to include “annual or routine levee maintenance ... work intended to preserve the levee system in its current condition.” The same amendments would define “levee rehabilitation” to include “repair work needed to improve the levee integrity and preserve existing flood risk reduction benefits... include[ing] raising the levee crown to offset subsidence, flattening waterside slopes, constructing landside berms, and widening levee crowns.”¹ Under these proposed definitions, the Project would clearly be “levee rehabilitation,” and not “levee maintenance.”

Thank you for filing your certificate of consistency for the Project. We look forward to working with you in the future as your District moves forward with continued levee improvements and further habitat enhancement. If you would like to discuss any of the suggestions included in this letter, please contact Erin Mullin at Erin.Mullin@deltacouncil.ca.gov or 916-445-5459.

Sincerely,



Cassandra Enos-Nobriga
Deputy Executive Officer
Delta Stewardship Council

¹ The Council anticipates considering the proposed amendments for adoption in early 2018. For more information, please visit <http://deltacouncil.ca.gov/delta-plan-amendments>.